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FILED
DEC 12 1904
JAMES H. McKENNEY,
Clerk.

Supreme Court of the United States.

OCTOBER TERM, 1904.

Case No. 411.

THE HAMBURG-AMERICAN STEAMSHIP COMPANY, PLAINTIFF IN ERROR,

against

MINNIE GRUBE, AS ADMINISTRATRIX, &C., DEFENDANT IN ERROR.

BRIEF AND ARGUMENT IN BEHALF OF DEFENDANT IN ERROR ON MOTION TO DISMISS OR AFFIRM.

GILBERT D. LAMB,
Of Counsel for Defendant in Error,
253 Broadway, New York.

LIVINGSTON MIDDLEDITCH CO., 68 DUANE ST., N. Y.

In the Supreme Court of the United States,

OCTOBER TERM, 1904.

HAMBURG-AMERICAN STEAMSHIP COMPANY, Plaintiff in Error, vs. MINNIE GRUBE, as Administratrix of the Goods, Chattels and Credits of JOHN GRUBE, deceased, Defendant in Error.	No. 411.

MOTION TO DISMISS WRIT OF ERROR OR TO AFFIRM THE JUDGMENT OF THE COURT BELOW.

Now comes the said Minnie Grube, as Administratrix, etc., the defendant in error herein, by her counsel appearing on her behalf and moves the Court on the record herein:

FIRST.—To dismiss the writ of error herein for the want of jurisdiction in this Court.

SECOND.—To affirm the judgment of the New York Supreme Court, the review of which is sought by the writ of error herein, upon the ground that the rulings, decision

and judgment of the New York Supreme Court are obviously correct, and upon the further ground that it is manifest, the writ of error herein was taken for delay only, and the question upon which the jurisdiction depends is so frivolous as not to need further argument.

THIRD.—For interest and damages, as provided for by Rule 23 of this Court.

Respectfully submitted,

GILBERT D. LAMB,
of Counsel for the Defendant in Error.

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1904, No. 411.

HAMBURG-AMERICAN STEAMSHIP COMPANY,
Plaintiff in Error,

AGAINST

MINNIE GRUBE, as Administratrix, &c.,
Defendant in Error.

Notice of Motion to Dismiss.

SIR:

Please take notice that the Defendant in Error in the above entitled action will, on the 9th day of January, 1905, between the hours of 12 o'clock noon and 1 o'clock P. M., or as soon thereafter as counsel can be heard at the Supreme Court Room in the City of Washington, District of Columbia, in open Court, move this Court on the record herein:

FIRST.—To dismiss the writ of error herein for the want of jurisdiction in this Court.

SECOND.—To affirm the judgment of the New York Supreme Court, the review of which is sought by the writ of error herein, upon the ground that the rulings, decision and judgment of the New York Supreme Court are obviously correct, and upon the further ground that it is manifest that the writ of error herein was taken for delay only

and that the question upon which the jurisdiction depends is so frivolous as not to need any further argument.

THIRD.—For interest and damages as provided for by Rule 23 of this Court.

Together with this motion the Defendant in Error serves upon said Plaintiff in Error a *copy of his brief to* be filed in the Supreme Court in support of the said motion.

Dated, New York, December 3rd, 1904.

Very respectfully yours,

GILBERT D. LAMB,
Attorney and of Counsel for
Defendant in Error,
253 Broadway,
New York City.

To

EVERETT P. WHEELER, Esq.,
Attorney and of Counsel for
Plaintiff in Error,
21 State Street,
New York City.

THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904, No. 411.

HAMBURG-AMERICAN STEAMSHIP COMPANY, Plaintiff in Error, vs. MINNIE GRUBE, as Administratrix of JOHN GRUBE, deceased. Defendant in Error.	Motion to Dismiss Writ of Error to Supreme Court of New York also Motion to Affirm Judgment of Supreme Court.

SUGGESTIONS IN SUPPORT OF MOTION BY DEFENDANT IN ERROR.

1. To dismiss the writ of error for the want of jurisdiction in this Court to re-examine the final judgment of the Supreme Court of the State of New York, because the record presents no Federal question.

2. To affirm the judgment of the New York Supreme Court because the decision and rulings of the Court below in all issues that may possibly involve the color of a Federal question were obviously right.

STATEMENT OF FACTS.

John Grube, intestate of defendant in error, while on the *James Gordon Bennett*, a vessel owned by a New Jersey corporation, was drowned on August 17th, 1901,

by the sinking of that vessel by the steamship *Alene*, owned by plaintiff in error. This action was to recover damages for the death of such intestate under the Statute of the State of New Jersey providing therefor.

The place of the collision is not determined by this record—the witnesses for the plaintiff in error testifying that it occurred in waters beyond the three-mile limit of the coast of the State of New Jersey, and on the high seas —the witnesses for the defendant in error testifying that it occurred within the three mile limit along said coast. (fols. 60, 66, 79 and 100, 148, 40).

There is nothing in the record from which any judicial conclusion can be drawn on this point—the charge of the Court being omitted.

In the complaint it was claimed that the *James Gordon Bennett* belonged to a New Jersey corporation and this was not denied by the answer.

There was simply a general verdict for defendant in error, fixing the amount of the damages. No instructions to the jury were asked for by plaintiff in error and no exceptions taken to the charge.

Plaintiff in error only excepted to the Trial Court's refusal to direct a verdict in its favor discussed under Point III.

POINTS.

It is evident that the plaintiff in error invokes the jurisdiction of this Court to re-examine the final judgment of the Supreme Court of the State of New York by virtue of one or more of the provisions of the latter clause of Section 709 of the Revised Statutes.

I.

THIS COURT HAS NO JURISDICTION AND WILL ENTERTAIN NONE UNLESS IT AFFIRMATIVELY APPEARS IN THE RECORD THAT A FEDERAL QUESTION WAS, OF NECESSITY, PASSED UPON BY THE COURT BELOW, AND AGAINST THE CLAIM OF PLAINTIFF IN ERROR—ACTUALLY AND PROPERLY SET.

In the case of

Giles v. *Teasley*, 193 U. S. 146,

Mr. Justice Day said at p. 160:

"It must appear from the record, by clear and necessary intendment, that the Federal question was directly involved so that the State Court could not have given judgment without deciding it." It is equally well settled that if the decision of a State Court rests on an independent ground—one which does not necessarily include a determination of the Federal right claimed or upon a ground broad enough to sustain it without deciding the Federal question raised, this Court has no jurisdiction to review the judgment of the State Court. *New Orleans* v. *New Orleans Waterworks Co.*, 142 U. S. 79; *Eustis* v. *Bolles*,

150 U. S. 361; *Dower* v. *Richards,* 151 U. S. 658, 666; *Wade* v. *Lawder,* 165 U. S. 624, 628."

And see

Col. Water Co. v. *Col. Elec. Co.* 172 U. S. 475, at p. 487.

In the case of

Eustis v. *Bolles,* 150 U. S. 361,

Mr. Justice Shiras said at p. 366:

"It is settled law that, to give this court jurisdiction of a writ of error to a state court, it must appear affirmatively, not only that a Federal question was presented for decision by the State Court, but that its decision was necessary to the determination of the cause, and that it was actually decided adversely to the party claiming a right under the Federal laws or Constitution, or that the judgment as rendered could not have been given without deciding it. *Murdock* v. *Memphis,* 20 Wall, 590; *Cook County* v. *Calumet & Chicago Canal Co.,* 138 U. S. 635.

It is likewise settled law that, where the record discloses that if a question has been raised and decided adversely to a party claiming the benefit of a provision of the Constitution or laws of the United States, another question, not Federal, has been also raised and decided against such party, and the decision of the latter question is sufficient, notwithstanding the Federal question, to sustain the judgment, this court will not review the judgment.

* * * * * * * * * *

In *Johnson* v. *Risk,* 137 U. S. 300, the record showed that, in the Supreme Court of Tennessee, two grounds of defence had been urged, one of which involved the construction of the provisions of the Federal bankrupt act of March 2, 1867, and the other the bar of the statute of

limitation of the State of Tennessee; and this court held that "where, in an action pending in a state court, two grounds of defence are interposed, each broad enough to defeat a recovery, and only one of them involves a Federal question, and judgment passes for the defendant, the record must show, in order to justify a writ of error from this court, that the judgment was rested upon the disposition of the Federal question; and if this does not affirmatively appear, the writ of error will be dismissed, unless the defence which does not involve a Federal question is so palpably unfounded that it cannot be presumed to have been entertained by the State Court."

II.

UPON LEGAL PRINCIPLES, IT WAS UNNECESSARY FOR THE JURY OR COURT BELOW TO DETERMINE THE LOCALITY OF THE COLLISION HEREIN—WHETHER WITHIN OR WITHOUT THE THREE-MILE LIMIT—AND THERE IS NOTHING IN THE RECORD INDICATING THAT IT EVER WAS DETERMINED—ALL THE TESTIMONY IN REFERENCE THERETO BEING MATERIAL, UPON THE PRESENT RECORD, UPON THE LITIGATED QUESTION OF NEGLIGENCE. THIS BEING SO, THE RECORD DOES NOT DISCLOSE THAT ANY FEDERAL QUESTION WAS NECESSARILY PASSED UPON OR INVOLVED.

The record, (fol. 154), simply states that the verdict was in favor of defendant in error (plaintiff below) and the only thing necessarily determined thereby was that plaintiff in error (defendant below) was negligent and that such negligence caused the death of the intestate

and that the material facts, necessary to a recovery, alleged in the complaint, existed.

The allegations of the complaint, Paragraphs Seventh and Tenth, when read together, were that the tort, causing decedent's death, occurred in New Jersey or New York territory, in the vicinity of the high seas.

This allegation was sustained by proof that the vessel in question, which decedent occupied, was owned by a New Jersey corporation, as this made it New Jersey territory for the purposes of this action.

Whether the fact that the vessel itself was owned by a New Jersey corporation or that the waters on which the vessel rested, constituted the place which decedent occupied New Jersey territory, is immaterial.

(See cases below cited).

Proof of the allegation in the complaint that the collision actually occurred in New Jersey waters, while material and pertinent to various questions, including that of negligence, was not essential to a recovery, such recovery being justified, as indicated, by the fact that the vessel was owned by a New Jersey corporation.

Assuming the truth of the testimony of the plaintiff in error, as is possible and necessary upon the motion to direct a verdict, that the situs of the collision was outside of the three-mile limit, the only question upon this record apparently necessarily passed upon by the Court below was exclusively that of the application of common law principles and New Jersey statutes to a transaction between private parties on the high seas in a civil action.

Nothing in the record discloses that it is even pretended by plaintiff in error that such an action by the Supreme Court would present any Federal question.

Nothing in the assignments of error indicates any such supposed claim and there is no authority or basis of any sort for asserting it.

The law of the forum and of the Federal Court was that New Jersey law affected a New Jersey vessel on the high seas.

In the case of *Int. Nav. Co.* v. *Lindstorm,* adm., 123 F. R., 475, the action was by an administrator of a decedent under the New Jersey statute, to recover damages for death on a New Jersey vessel on the high seas.

Mr. Justice Wallace said:

"The territorial sovereignty of a State extends to a vessel of the State when it is upon the high seas, the vessel being deemed a part of the territory of the State, to which it belongs; and it follows that a State statute which creates a liability or authorizes a recovery for the consequences of a tortious act operates as efficiently upon a vessel of this State when the vessel is beyond its boundaries as it does when it is physically within the State."

See also to the same effect, the leading cases:

McDonald v. *Mallory,* 77 N. Y. 546.
Crapo v. *Kelly,* 16 Wall, 610.

If the New York Courts erred solely with respect to the application of State laws, this, of course is no ground for the intervention of Federal Courts—or for this writ of error.

III.

THE ACTION OF THE COURT BELOW UPON WHICH IS BASED THE CLAIM OF PLAINTIFF IN ERROR THAT FEDERAL QUESTIONS ARE PRESENTED FOR THE CONSIDERATION OF THIS COURT.

This is detailed at fols. 150-154, of the record and was simply a denial by the court below of a single motion by plaintiff in error to direct a verdict in favor of plaintiff in error as follows:

The defendant asked the Court to direct a verdict for the defendant, upon the following grounds:

(1) Defendant claims the right, under the statute of the United States confirming and approving the agreement as to boundaries between the State of New York and the State of New Jersey, to be free in navigating the main sea to the eastward of Sandy Hook Peninsula, from the operation of law of the State of New Jersey giving a right of action for injuries causing death, and claims that under the statutes aforesaid, the jurisdiction of that state extends only to the main sea; that is to say, low water mark along its exterior coast line and to a line drawn from headland to headland across the entrance to the Bay of New York. It, therefore asks the Court to direct the jury to return a verdict for the defendant on the ground that it appears by uncontradicted evidence that the collision between the SS. *Alene* and the schooner, *James Gordon Bennett,* to recover damages for which this suit is brought, occurred upon the main sea and to the eastward of the Sandy Hook Peninsula, and

at a distance of more than a mile to the eastward of low water mark upon the exterior line thereof.

(2) Defendant claims the right by reason of the purchase by the United States of the Sandy Hook Peninsula and the cession to the United States by the State of New Jersey of jurisdiction over the same and the long continued use of that peninsula, and of the main sea to the eastward of it for military purposes, to be free in navigating the main sea to the eastward of that peninsula from the operation of any law of the State of New Jersey, giving a right of action for injuries causing death, and claims that the main sea to the eastward of said peninsula to a distance of three miles from the shore is subject to the exclusive jurisdiction of the United States. It, therefore, asks the Court to direct the jury to return a verdict for the defendant, on the ground that it appears by uncontradicted evidence that the collision between the SS. *Alene* and the schooner *James Gordon Bennett,* to recover damages for which this suit is brought, occurred upon the main sea and to the eastward of the Sandy Hook peninsula, and at a distance of more than a mile to the eastward of low water mark, upon the exterior line thereof.

The Court denied the motion and defendant excepted."

A.

The grounds in above sub-division 1 as apparently claimed by plaintiff in error, are that the confirmation of two statutory state agreements by the Federal Statute divested the States of New Jersey and New York of certain rights over the adjoining sea theretofore belonging

to them and vested the exclusive legislative jurisdiction thereon in the Federal government and that therefore a verdict should have been directed.

(The apendix annexed hereto, contains the statutes referred to in full). A mere inspection of these statutes discloses not a word justifying any such claim as is asserted—absolutely nothing being said by either State as to abdicating any rights in favor of the United States, but merely fixing the boundaries of the said two States. Manifestly the claims in the above sub-division present no Federal question.

B.

The grounds in above, sub-division 2, as apparently claimed by plaintiff in error, are that the cession by the State of New Jersey to the United States of America of a certain strip of land at Sandy Hook vested in the United States exclusive legislative jurisdiction over the littoral waters extending three miles to the eastward of the coast line thereof, and that therefore a verdict should have been directed.

The plaintiff in error explicitly limited its claim to exclusive Federal jurisdiction over the adjoining waters to the three mile limit.

The record, however, discloses evidence that the collision in question occurred beyond the three-mile limit.

See record at fols. 100 and 148 in substance showing that the *Bennett* sank immediately upon the collision; that her hull was found at point marked "Wreck" Exhibit 2, and that this point was outside three-mile limit. (See stipulation, fols. 40 and 41).

A verdict in favor of plaintiff in error obviously

could not be directed on the grounds set up by plaintiff in error when its own evidence showed that the situs of the collision was outside the territory to which it limited its claim of Federal jurisdiction.

On the authorities above cited under Point II, defendant in error was quite as much entitled to recover for the collision outside the three-mile limit as if it occurred inside of it.

If plaintiff in error now asserts that it intended to claim exclusive Federal jurisdiction over high seas beyond three miles from the coast the claim is not supported by any authorities known to the writer and must be deemed frivolous.

IV.

IT WAS ALLEGED IN THE COMPLAINT, PARAGRAPH SIXTH, AND NOT DENIED BY THE ANSWER AND THEREFORE TO BE TAKEN AS TRUE THAT THE "JAMES GORDEN BENNETT" WAS A VESSEL OWNED BY A NEW JERSEY CORPORATION. AS SUCH, IT WAS SUBJECT WITH ITS OCCUPANTS, INCLUDING JOHN GRUBE, TO THE LEGISLATIVE JURISDICTION AND LAW OF THE STATE OF NEW JERSEY, WHILE ON THE HIGH SEAS, AND EVEN UPON THE TESTIMONY OF PLAINTIFF IN ERROR, ABOVE REFERRED TO AS TO THE SITUS OF THE COLLISION, THE VERDICT AS RENDERED, WAS RIGHT.

See cases above cited:

Int. Nav. Co. v. *Lindstorm*, 123 F. R. 475.
McDonald v. *Mallory*, 77 N. Y. 546.
Crapo v. *Kelly*, 16 Wall, 610.
Code of Civil Procedure (N. Y). §522.

V.

THE FORMAL ASSIGNMENTS OF ALLEGED ERROR BY PLAINTIFF IN ERROR.

These are seven in number and are printed at pp. 71-73 of the record.

So far as these embody grounds not affirmatively appearing in the record to have been specifically set up or claimed or involved in the decision, they must be disregarded pursuant to repeated decisions of this Court. In reality they are apparently intended to be merely amplifications of the portion of the record quoted under Point III.

A.

The "First," "Second," "Third," "Fourth" and "Fifth" grounds allege that the Supreme Court of the State of New York erred in "deciding" in a certain way and "denying" alleged rights and claims, but the record contains no basis for any such allegations except so far as involved in denying the motion of plaintiff in error to direct a verdict in its favor, above discussed under Point III, which motion, could not properly have been granted on the record owing to the fact that there was evidence that the situs of the collision was outside of the three-mile limit on the high seas.

These five assignments of error by plaintiff in error are mere assertions as to the action of the trial court without any support in the record.

The record shows that the trial court neither "decid-

ed'' in a certain way nor ''denied'' any rights or claims of plaintiff in error, except only it refused to direct a verdict—and properly,—because there was a dispute as to the locality of the collision and the record discloses no claim of plaintiff in error to be entitled to a verdict if the collision was beyond the three-mile limit (fols. 150-154).

If, as now asserted by plaintiff in error by the above assignments of error, it was the intention of plaintiff in error to claim that if the jury found that the collision occurred within the three-mile limit, there would be no liability, the proper and necessary course would obviously have been for plaintiff in error to ask the court below to so instruct the jury.

The record contains no affirmative evidence of such a request and, indeed, none was made.

The record does disclose that no exception was taken by plaintiff in error to the charge of the court, and this latter must be conclusively presumed by this court to have been right.

Non constat on this record but that the Trial Court did charge that plaintiff below was not entitled to recover if the jury found the collision occurred within the three-mile limit.

The ''Sixth'' assignment of error is the one in fact discussed under Point III and alleges error in denying the motion to direct a verdict and need be no further discussed.

C.

The ''Seventh'' assignment of error is merely an allegation that the judgment was erroneous and must be regarded as unavailing except as supported by the preceding assignments, and requires no separate discussion.

It is apparent from a mere inspection of the record at fols. 150-154, that none of the assignments of error are sustained by it.

These claims now made by plaintiff in error were never properly set up upon the trial, whether the collision is deemed to have occurred within or without the three-mile limit, and this Court, therefore, is without jurisdiction.

The trial Court could legally have made no different ruling on this record, even if this Court should be of opinion that the Federal government had exclusive legislative jurisdiction over the three-mile littoral off Sandy Hook.

VI.

THE CLAIM OF FEDERAL JURISDICTION, NOT BEING PROPERLY SET UP IN THE RECORD, THE WRIT OF ERROR SHOULD BE DISMISSED.

As above indicated, the proper course for plaintiff in error to have pursued, in order to raise the question, was to ask the trial Court to instruct the jury that if they found the collision to have occurred within the three-mile limit the verdict should be for defendant (below); plaintiff in error omitted to do this.

In the case of

Hamburg Am. S. S. Co., v. *Lenman*, 194 U. S. 629,

a case arising out of the collision involved in the case at bar—a motion to dismiss was granted because the claim of plaintiff in error was not properly set up.

The authorities there cited by this Court were as follows:

Staten Island Railway Company v. *Lambert*, 131 U. S. Appx. ccxi.
Weatherby v. *Bowie*, 131 U. S. Appx. ccxv.
Murdock v. *Memphis*, 20 Wall 590.
Egan v. *Hart*, 165 U. S. 188, 191.
Hannibal and St. Joseph Railway Company v. *Packet Company*, 125 U. S. 260; 272.
Eustis v. *Bolles*, 150 U. S. 361.
New Orleans Water Works Company v. *Louisiana*, 185 U. S. 336.

And see

Lennan v. *Hamburg American Steamship Company*, 73 App. Div. (N. Y.) 357.
The Alene, 116 Fed. Rep. 57.

VII.

Motion to Affirm.

The rights of the United States to Sandy Hook and its coast are derived from the act of the Legislature of the State of New Jersey, passed in the year 1846, (Laws of N. J. 1846, p. 124), quoted in appendix and its terms are such that even if a Federal question is involved it was clearly properly decided.

(The deeds conveying the legal title of the land in the record (fols. 106-137) are in the usual form of simple conveyances of real estate).

By the terms of the Act of the New Jersey Legislature, referred to, the United States acquired the land—nothing being said about the water—upon the condition that the cession "shall not prevent the operation of the

public laws of this state" (New Jersey) "within the bounds of said tract so far as the same may not be incompatible with the free use and enjoyment of the said premises by the United States for the purposes specified."

It has been decided by the Federal Courts that the jurisdiction of the United States extends only to low water mark on the New Jersey shore.

See

Middleton v. *La Campagni,* 100 F. R. 866.

The Middleton case is also an authority for the proposition that the acquisition of Sandy Hook by the United States was not an instance of a "purchase by the consent of the Legislature" of land by the United States authorized by §8 of Art. 1, of the Constitution of the United States.

See also

Fort Leavenworth v. *Lowe,* 114 U. S. 525.

Conclusion.

It is Respectfully Submitted for the Reasons Stated That This Motion to Dismiss or Affirm Should be Granted. The Defendant in Error, as the Record Discloses, is the Widow of the Intestate, Wholly Dependent Upon the Latter While He Lived for Her Support and Has Already Waited Between Three and Four Years for the Compensation Which has Been Awarded to Her.

Gilbert D. Lamb,
Counsel for Defendant in Error.

APPENDIX TO BRIEF OF DEFT. IN ERROR.

Statutes Involved or Cited.

Constitution of U. S. Art. 1 Sec. 8, p..... i
Laws of New Jersey, 1846, p..... ii
Act of Congress, app'd Mch. 26, 1804, p..... iii
Act of Congress, app'd June 28, 1834, p..... iv
Act of New Jersey, passed Feb'y. 26, 1834, p..... ix

EXTRACT FROM CONSTITUTION OF UNITED STATES.

ART. I. SEC. 8, (IN PART).

"The Congress shall have power * * * *To exercise exclusive Legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of Government of the United States, and to exercise like authority over all places purchased by the consent of the Legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings;* And

"To make all Laws which shall be necessary and proper for carrying into execution the foregoing powers and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof."

LAWS OF NEW JERSEY, 1846, PAGE 124.

An Act to vest in the United States of America jurisdiction over Sandy Hook.

1. Be it enacted by the Senate and General Assembly of the State of New Jersey: That the jurisdiction in and over all that portion of Sandy Hook, in the County of Monmout, owned by the United States, lying north of an east and west line through the mouth of Young's creek at low water, and extending across the island or cape of Sandy Hook from shore to shore, and bounded on all other sides by the sea and Sandy Hook bay, be and the same is hereby ceded to the United States, for military purposes; and the said United States shall retain such jurisdiction so long as the said tract shall be applied to the military or public purposes of said United States, and no longer.

2. And be it enacted: That the jurisdiction ceded in the first section of this act, shall not prevent the execution on the said tract of land of any process, civil or criminal, under the authority of this State, except so far forth as such process may affect any of the real or personal property of the United States of America within the said tract; nor shall it prevent the operation of the public laws of this State within the bounds of the said tract; so far as the same may not be incompatible with the free use and enjoyment of the said premises by the United States for the purpose above specified.

3. And be it enacted: That all the lands and tenements within the aforesaid boundaries, so long as the same shall continue the property of the United States, and to be used for the purpose expressed in this act, shall be and remain exempted from all taxes, assessments, and other charges which may be imposed under the authority of this State.

4: And be it enacted: That this act shall take effect immediately.

Approved March, 1846.

ACT OF CONGRESS, APPROVED MARCH 26, 1804.

United States Statutes at large, Vol. 2, p. 294.

Chap. XLIX.—An act to erect a lighthouse at the mouth of the Mississippi River, and also a lighthouse at or near the pitch of Cape Lookout, in the State of North Carolina; and a beacon at the north point of Sandy Hook.

SEC. 4. And be it further enacted: That it shall be the duty of the Secretary of the Treasury, as soon as the fee of the soil shall have vested in the United States, to cause a beacon to be erected on the north point of Sandy Hook, and the sum of two thousand dollars out of any unappropriated monies is hereby appropriated for that purpose.

Approved March 26, 1804.

ACT OF CONGRESS, APPROVED JUNE 28, 1834.

United States Statutes at large, Vol. 4, p. 708.

Chap. CXXVI.—An act giving the consent of Congress to an agreement or compact entered into between the State of New York and the State of New Jersey, respecting the territorial limits and jurisdiction of said states.

WHEREAS, Commissioners duly appointed on the part of the State of New York, and commissioners duly appointed on the part of the State of New Jersey, for the purpose of agreeing upon and settling the jurisdiction and territorial limits of the two states, have executed certain articles, which are contained in the words following, *viz:*

Agreement made and entered into by and between Benjamin F. Butler, Peter Augustus Jay and Henry Seymour, commissioners duly appointed on the part and behalf of the State of New York, in pursuance of an act of the legislature of the said State, entitled "An act concerning the territorial limits and jurisdiction of the State of New York and the State of New Jersey, passed January 18th, 1833, of the one part; and Theodore Frelinghuysen, James Parker and Lucius Q. C. Elmer, commissioners duly appointed on the part and behalf of the State of New Jersey, in pursuance of an act of the Legislature of the said State, entitled "An act for the settlement of the territorial limits and jurisdiction between the States of New Jersey and New York," passed February 6th, 1833, of the other part.

ARTICLE FIRST.—The boundary line between the two States of New York and New Jersey, from a point in the middle of Hudson River, opposite the point on the west shore thereof, in the forty-first degree of north latitude,

as heretofore ascertained and marked, to the main sea, shall be the middle of the said river, of the Bay of New York, of the waters between Staten Island and New Jersey, and of Raritan Bay, to the main sea; except as hereinafter otherwise particularly mentioned.

ARTICLE SECOND.—The State of New York shall retain its present jurisdiction of and over Bedlow's and Ellis's islands; and shall also retain exclusive jurisdiction of and over the other islands lying in the waters above mentioned and now under the jurisdiction of that State.

ARTICLE THIRD.—The State of New York shall have and enjoy exclusive jurisdiction of and over all the waters of the bay of New York; and of and over all the waters of Hudson River lying west of Manhattan Island and to the south of the mouth of Spuyten Duyvil creek; and of and over the lands covered by the said waters to the low water-mark on the westerly or New Jersey side thereof; subject to the following rights of property and of jurisdiction of the State of New Jersey, that is to say:

1. The State of New Jersey shall have the exclusive right of property in and to the land under water lying west of the middle of the bay of New York, and west of the middle of that part of the Hudson River which lies between Manhattan Island and New Jersey.

2. The State of New Jersey shall have the exclusive jurisdiction of and over the wharves, docks, and improvements made and to be made on the shore of the said State; and of and over all vessels aground on said shore, or fastened to any such wharf or dock; except that the said vessels shall be subject to the quarantine or health laws, and laws in relation to passengers, of the State of New York, which now exist or which may hereafter be passed.

3. The State of New Jersey shall have the exclusive right of regulating the fisheries on the westerly side of

the middle of the said waters, Provided: That the navigation be not obstructed or hindered.

ARTICLE FOURTH.—The State of New York shall have exclusive jurisdiction of and over the waters of the Kill Van Kull between Staten Island and New Jersey to the westernmost end of Shooter's Island in respect to such quarantine laws and laws relating to passengers, as now exist or may hereafter be passed under the authority of that State and for executing the same; and the said State shall also have exclusive jurisdiction, for the like purposes of and over the waters of the Sound from the westernmost end of Shooter's Island to Woodbridge creek, as to all vessels bound to any port in the said State of New York.

ARTICLE FIFTH.—The State of New Jersey shall have and enjoy exclusive jurisdiction of and over all the waters of the Sound between Staten Island and New Jersey lying south of Woodbridge creek, and of and over all the waters of Raritan Bay lying westward of a line drawn from the lighthouse at Prince's Bay to the mouth of Mattavan creek; subject to the following rights of property and of jurisdiction of the State of New York, that is to say:

1. The State of New York shall have the exclusive right of property in and to the land under water lying between the middle of the said waters and Staten Island.

2. The State of New York shall have the exclusive jurisdiction of and over the wharves, docks and improvements made and to be made on the shore of Staten Island, and of and over all vessels aground on said shore, or fastened to any such wharf or dock; except that the said vessels shall be subject to the quarantine or health laws, and laws in relation to passengers of the State of New Jersey, which now exist or which may hereafter be passed.

3. The State of New York shall have the exclusive

right of regulating the fisheries between the shore of Staten Island and the middle of the said waters; Provided: That the navigation of said waters be not obstructed or hindered.

ARTICLE SIXTH.—Criminal process, issued under the authority of the State of New Jersey, against any person accused of an offense committed within that State; or committed on board of any vessel being under the exclusive jurisdiction of that State as aforesaid; or committed against the regulations made or to be made by that State in relation to, the fisheries mentioned in the third article; and also civil process issued under the authority of the State of New Jersey against any person domiciled in that State, or against property taken out of that State to evade the laws thereof; may be served upon any of the said waters within the exclusive jurisdiction of the State of New York, unless such person or property shall be on board a vessel aground upon, or fastened to, the shore of the State of New York, or fastened to a wharf adjoining thereto, or unless such person shall be under arrest, or such property shall be under seizure, by virtue of process or authority of the State of New York.

ARTICLE SEVENTH.—Criminal process issued under the authority of the State of New York, against any person accused of an offence committed within that State, or committed on board of any vessel being under exclusive jurisdiction of that State as aforesaid, or committed against the regulations made or to be made by that State in relation to the fisheries mentioned in the fifth article; and also civil process issued under the authority of the State of New York against any person domiciled in tha' State, or against property taken out of that State, to evade the laws thereof, may be served upon any of the said waters within the exclusive jurisdiction of the State of New Jersey, unless such person or property shall be on board a vessel aground upon or fastened to the shore of

the State of New Jersey, or fastened to a wharf adjoining thereto, or unless such person shall be under arrest, or such property shall be under seizure by virtue of process or authority of the State of New Jersey.

ARTICLE EIGHTH.—This agreement shall become binding on the two States when confirmed by the Legislatures thereof respectively, and when approved by the Congress of the United States.

Done in four parts (Two of which are retained by the Commissioners of New York, to be delivered to the governor of that State, and the other two of which are retained by the commissioners of New Jersey, to be delivered to the governor of that State) at the city of New York, this sixteenth day of September, in the year of our Lord one thousand eight hundred and thirty-three and of the independence of the United States the fifty-eighth.

B. F. BUTLER,
PETER AUGUSTUS JAY,
HENRY SEYMOUR,
THEO. FRELINGHUYSEN,
JAMES PARKER,
LUCIUS Q. C. ELMER.

And whereas the said agreement has been confirmed by the Legislatures of the said States of New York and New Jersey, respectively,—therefore,

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress, assembled: That the consent of the Congress of the United States is hereby given to the said agreement, and to each and every part and article thereof, Provided: That nothing therein contained shall be construed to impair or in any manner affect, any right of jurisdiction of the United States in and over the islands or waters which form the subject of the said agreement.

Approved, June 28, 1834.

The statute of New Jersey passed February 26, 1834:

"An act to ratify and confirm an agreement made between the commissioners appointed by the governor of the State of New York and the commissioners appointed by the governor of the State of New Jersey, respecting the territorial limits and jurisdiction between the said States.

"WHEREAS, Commissioners duly appointed on the part of the State of New York and commissioners duly appointed on the part of New Jersey for the purpose of agreeing upon and settling jurisdiction and territorial limits of the two States have executed certain articles, two copies for each State, which are contained in the following words:

"AGREEMENT, made and entered into by and between Benjamin F. Butler, Peter Augustus Jay, and Henry Seymour, commissioners duly appointed on the part and behalf of the State of New York in pursuance of an act of the Legislature of the said State, entitled 'An act concerning the territorial limits and jurisdiction of the State of New York and the State of New Jersey,' passed January 18th, 1833, of the one part, and Theodore Frelinghuysen, James Parker and Lucius Q. C. Elmer, commissioners, duly appointed on the part and behalf of the State of New Jersey, in pursuance of an act of the Legislature of the said State entitled 'An act for the settlement of the territorial limits and jurisdiction between the States of New Jersey and New York,' passed February 6th, 1833, of the other part.

"ARTICLE 1.—The boundary line between the two States of New York and New Jersey, from a point in the middle of the Hudson River, opposite the point on the west shore thereof, in the forty-first degree of north latitude, as heretofore ascertained and marked, to the main sea, shall be the middle of the said river, of the bay of

New York, of the water between Staten Island and New Jersey, and of Raritan Bay, to the main sea, except as hereinafter otherwise particularly mentioned.

* * * * * * *

THEODORE FRELINGHUYSEN,
JAMES PARKER,
LUCIUS Q. C. ELMER,
B. F. BUTLER,
PETER AUGUSTUS JAY,
HENRY SEYMOUR.

Therefore,

"Be it enacted by the Council and General Assembly of this State, and it is hereby enacted by the authority of the same, That the aforesaid agreement, and every article, clause, matter and thing therein contained, shall be and the same is hereby fully and amply ratified and confirmed on the part of the State of New Jersey.

"Passed, February 26, 1834."